DAVIS AND SMITH, LTD.

IBLA 82-955 Decided May 9, 1983

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting competitive oil and gas lease offer U 51049.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

   Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: Steven W. Davis and Roger Smith for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Davis and Smith, Ltd., has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated May 21, 1982, rejecting its high bid of $1,049.20 ($26.23 per acre) for parcel 29 at the competitive oil and gas lease sale held on April 27, 1982. 1/ BLM stated that the Minerals Management Service (MMS) 2/ recommended rejection of the bid because it was below the MMS presale evaluation of the tract.

On appeal, appellant presents reasons why its high bid for parcel 29 should not be rejected. Several of these reasons merit attention. Appellant contends that the high risk nature and questionable profitability of parcel 29 should influence the tract's valuation. Appellant points out that parcel 29 is located 1 mile southeast of parcel 28 which received no bids in the sale and is adjacent to a dry hole in the SW 1/4 of sec. 22. Further, appellant states that the nearest well control, 4-30-16S-24, is 2 miles to the east of parcel 29 and produced only 146 mcfd on a 22-hour test and is now shut in. Appellant also points out that parcel 29 is part of a formation containing low porosities which requires enhanced and costly recovery techniques to permit commercial production. In addition, appellant contends that the sales used by MMS for its presale estimate of value were for state lands which would not be comparable to a sale for Federal land because of the difference in primary terms (10 years for a state lease versus 5 years for a Federal lease) and more favorable state royalty provisions. Finally, appellant draws attention to the time of the sale and asserts that companies are no longer willing to purchase leases on marginal lands at the prices they once paid. Appellant then concludes that the rationale presented by MMS and the concurring decision of BLM to reject the lease offer on parcel 29 are unfounded.

[1, 2] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); Frances J. Richmond, 29 IBLA 137 (1977).

At the time of the sale, MMS was the Secretary's technical expert in matters concerning geologic evaluation of tracts of the land offered at a sale of competitive oil and gas leases, 3/ and the Secretary is entitled to

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1/ Parcel 29 contains 40 acres in the NW 1/4 SW 1/4 of sec. 26, T. 16 S., R. 23 E., Salt Lake meridian, Utah.

2/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey.

3/ Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was amended, the amendment is not relevant to this discussion.

rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., supra; Charles E. Hinkle, 40 IBLA 250 (1979). The Board stated in Southern Union Exploration Co., 51 IBLA 89, 92 (1980):

> [T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

We are unable to determine the correctness of the BLM decision on competitive bid U 51049 or the merits of appellant's arguments on the present record. The record is deficient because it does not reveal the presale evaluation of parcel 29. In a justification memorandum it is stated that the best evidence of the value of parcel 29 is comparable sales. Information concerning three state sales is provided and the range of comparable sales is established as $100 to $350. It is concluded that appellant's offer is so substantially below the minimum value in that range that it cannot be considered fair market value.

There is insufficient elaboration of the factual data that is presented. See Southern Union Exploration Co., 41 IBLA at 84; Gerald S. Ostrowski, 34 IBLA 254 (1978). The explanation for the comparable sales is conclusory. BLM states that the lease sales are comparable to parcel 29 because of the following: "(1) [T]ime interval between sale date and appraisal date, (2) similar motivation of sale transaction, (3) geographic location, (4) similarity of highest and best use positions, (5) physical geologic setting, and (6) economic similarity." These factors are similar to the rating elements listed in the Uniform Appraisal Standards for Federal Land Acquisition (1973) at page 9. However, the record contains no explanation of how these factors compared with parcel 29. A proper comparison should analyze whether the comparable sales are superior, inferior or comparable to the subject sale for each of the elements. See, e.g., B & M Service, Inc., 48 IBLA 233, 236 (1980). Such an analysis would allow the Board to determine whether a rational basis exists for BLM's conclusions. Moreover, we are unable to ascertain what consideration, if any, was afforded the fact that the comparable lease sales were all for state lands which appellant contends are not comparable because state leases have longer primary terms resulting in increased bonuses and more advantageous royalty schedules.

Finally, the geologic information upon which BLM relies appears to be inconsistent, and no effort is made to resolve the inconsistency. The geologic report states:

> These two parcels [parcels 28 and 29] are in a marginal area where some gas can be expected from the Dakota, Cedar Mountain, or Morrison Formations. The producing wells in a line east of these parcels are in a structurally more favorable area. The dry wells to the west are more typical. However, the overall chances are hard to predict as the sands are very lenticular. Initial production is expected to be about 200 MCFGPD or less for each of the parcels.
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> Parcel 29 is in the Middle Canyon Unit. Therefore, it has some value beyond Parcel 28, but is not likely to be in a participating unit soon. [Emphasis added.]

Yet, BLM further states that a greater minimum bid is justified by:

> The fact that a participating area for the Middle Canyon Unit was based on the well located in sec. 30, T. 16 S., R. 24 E., approximately 3 miles from Parcel 29. Participating areas are based on a determination by the Unit Section, Central Region Oil and Gas Office, that a well within the unit is capable of producing unitized substances in paying quantities. Parcel 29 lies within this unit and therefore is determined to have a higher probability of a successful completion than parcels outside the unit.

And finally BLM concludes that a proprietary geologic report supports parcel 29 as having "geologic comparability" with the other tracts forming the Middle Canyon Unit. This proprietary report, however, though relied upon, was not submitted for the Board's independent review.

This does not mean the Board will substitute its judgment for that of BLM in determining fair market value for parcel 29, but rather that the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Petrovest, Inc., 71 IBLA 250 (1982); Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

Therefore, we remand this case to BLM for readjudication of appellant's bid. In readjudicating the bid, BLM should consider the arguments presented by appellant in this appeal. If the bid is rejected again, BLM shall set forth in a meaningful way the reasons for doing so, including the presale evaluation, so the Board can properly consider the issues in event of an appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is set aside and the case remanded for action consistent with this decision.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge